

## **REMARKS**

### **A. BACKGROUND**

The present Amendment is in response to the Office Action mailed July 21, 2009. Claims 1-20 were pending and rejected in view of cited art.<sup>1</sup> By this amendment, no claims are cancelled, claims 1, 10, 15-16, and 20 are amended, and no new claims are added. Claims 1-20 are now pending in view of the above amendments.<sup>2</sup>

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

### **B. PRIOR ART REJECTIONS**

#### **I. REJECTION UNDER 35 U.S.C. § 103**

The Office Action rejected claims 1-2, 5-8, 10-12 and 15-20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,699,256 (*Logan*) in view of U.S. Patent No. 6,152,937 (*Petersen*). Claims 3-4, and 13-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Logan* in view of *Petersen* and in further view of U.S. Patent No. 6,036,720 (*Abrams*). Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Logan* in view of *Petersen* and in further view of U.S. Patent No. 5,769,870 (*Salahieh*). Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. § 103(a) for at least the reason that the

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

<sup>2</sup> Support for the claim amendments and/or new claim(s) can be found throughout the specification and/or drawings as originally filed.

cited references, either alone or in combination, fail to teach or suggest each and every element of the claims.

*Logan* and *Peterson* describe devices that are configured for forming a surgical connection between tubular structures, such as blood vessels. The devices described in *Logan* and *Peterson* are configured such that an opening can be created in the sidewall of a first vessel and a second vessel can be joined to the opening such that blood can flow freely therebetween. See, e.g., *Logan* Col 1, ll. 9-24; Col 14, ll. 46-53; and Figure 34. The Office Action asserts that *Logan* discloses "a method for manufacturing a clip comprising a step of providing material . . . removing portions (Col. 7, lines 37-39) leaving looped elements defining a periphery and tines extending from a flat plane[,]. . . flatten[ing the clip] to a two-dimensional configuration[, and]. . . heat treating the clip with a planar configuration, as shown in Figs. 2 and 4." Office Action, pg. 2. *Peterson* is cited in the Office Action for allegedly teaching that "a clip may be formed from a sheet." Office Action, pg. 3.

As amended and presented herein, independent claims 1, 10, and 15 recite, in part, "[a] method for manufacturing a clip configured for closing an opening in a body lumen." Claim 1 is further amended herein to recite, in part, "heat treating the clip with the clip in a planar configuration such that the clip is capable of resuming the planar configuration upon release from a deformed state." Claim 10 is further amended herein to recite, in part, "with a sheet of material defining a plane, removing one or more portions from the sheet to form a clip [including] a plurality of tines . . . , the plurality of tines including one or more pairs of opposing primary tines extending from opposing looped elements and being oriented towards one another across a central axis of the clip in a planar configuration, the primary tines having a length such that they at least partially overlap one another and lie substantially parallel to each other when the clip is in the planar configuration." Claim 15 is further amended herein to recite, in part, "a generally-annular clip" that includes "a pair of primary tines extending from the body within the plane, . . . the primary tines being offset one to another, the primary tines having a length such that they at least partially overlap one another and lie substantially parallel to each other when the clip is in a planar configuration" and "heat treating the clip with the clip in the planar configuration such that the clip resumes its planar configuration upon release from a deformed state."

The Office Action has not cited, nor has Applicant found any portion of *Logan* and/or *Peterson* that discloses "heat treating the clip with the clip in a planar configuration," as recited,

in part, in claims 1, 10, and 15. In contrast to what is asserted in the Office Action, Figure 2 of *Logan* does not illustrate a clip having "looped elements" and "tines extending from a flat plane." Office Action, pg. 2. For example, Applicant respectfully submits that the graft attachment fingers 202 shown in Figure 2 project out of the plane containing internal fingers 204 and external fingers 206. Moreover, the Office Action has not cited, nor has Applicant found any portion of *Logan* and/or *Peterson* that discloses "that the clip is capable of resuming the planar configuration upon release from a deformed state," as recited in, for example, claim 1. As can be seen clearly in the Figures of both *Logan* and *Patterson*, in no instance does either reference teach or suggest a method for manufacturing a clip that is heat treated in a planar configuration that can resume "the planar configuration upon release from a deformed state."

With respect to claims 10 and 15, the Office Action has not cited, nor has Applicant found any portion of *Logan* and/or *Peterson* that discloses a method for manufacturing that includes "one or more pairs of opposing primary tines extending from opposing looped elements and being oriented towards one another across a central axis of the clip in a planar configuration, the primary tines having a length such that they at least partially overlap one another and lie substantially parallel to each other when the clip is in the planar configuration," as recited, for example, in claim 10.

Furthermore, the Office Action has not cited, nor has Applicant found any portion of *Abrams* or *Salahieh* that overcomes the deficiencies of either *Logan* and/or *Peterson* discussed herein. As such, Applicant respectfully submits that there is no combination of *Logan*, *Peterson*, *Abrams*, or *Salahieh* that teaches or suggests the inventions claimed in independent claims 1, 10, and 15, and for at least the same reasons neither teaches nor suggests the limitations of dependent claims 2-9, 11-14, and 16-20. Consequently, Applicant requests the withdrawal of the rejection of claims 1-20 under Section 103.

#### **C. CONCLUSION**

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any

Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 21st day of October, 2009.

Respectfully submitted,

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